

## **REMARKS**

In the Final Office Action mailed March 8, 2005, the Examiner rejected claims 1-21 under 35 U.S.C. § 112, second paragraph, as being indefinite (Office Action [hereinafter "OA"], paragraph 5); and rejected claims 1-21 under 35 U.S.C. § 103(a) as being unpatentable over McDonough et al. (U.S. Patent No. 6,070,142) in view of Simor (U.S. Patent No. 5,060,150), and further in view of Serpanos (EP 0 537 509 A2) (OA, paragraph 6).

In view of the remarks that follow, Applicant respectfully traverses the Examiner's rejections of the claims under 35 U.S.C. §§ 103(a) and 112.

### **Information Disclosure Statement**

The Examiner indicated that U.S. Statutory Invention Registration Nos. H1,1894 and H1,964 were not considered because they are non-patent literature publications and no copies of the publications were provided. Applicant first notes that "H1,1894" should read "H1,894." Despite this typographical error by the Applicant, the date of publication and inventor were still correctly listed.

Applicant also respectfully submits that, contrary to the Examiner's assertion, the aforementioned documents are U.S. patent publications. For example, even though a statutory invention registration is not a patent, it has all of the defensive attributes of a patent. More importantly, statutory invention registrations are readily available to patent examiners and require no more effort to print out or otherwise access than a patent or published application.

Nevertheless, Applicant is providing herewith copies of the aforementioned documents and requests that the Examiner consider them.

### **Rejections Under 35 U.S.C. § 112**

The Examiner rejected claims 1-21 under 35 U.S.C. § 112, second paragraph, as being indefinite. Specifically, the Examiner alleged that it is not explicitly clear whether a “call duration value associated with the second process” and “communication” is a communication with an operating system call or a telephone call. Applicant traverses this rejection. A *communication* call and an *operating system* call, in the context of the claims, are two entirely different things. Generally, a call as it relates to an operating system call is a programming statement that requests services from another subroutine or program.

A “call” as it relates to communications is different. This type of call refers to an action taken by a transmitting station to establish a connection with a receiving station. One of ordinary skill in the art would understand that “call” as it relates to a “call duration value of a communication” relates to an action to establish a connection and not a programming statement that requests services from another subroutine or program. One of ordinary skill in the art would also understand that within the communications realm, there are types of calls other than “telephone calls,” such as fax calls and data calls. The apparent requirement by the Examiner to limit the claims to an operating system call or a telephone call is unfounded.

The Examiner also alleged, in paragraph 5 of the OA, that:

In claim 1, “the first process retrying requesting of the resource at a later time based on the indication” is indefinite because it is unclear in the claim language why requesting even needs to be retried. An essential step is omitted in the claim language which should relate that the first attempt to requesting of the resource was unsatisfactory or that it had failed, for example.

Applicant respectfully disagrees. Even assuming the Examiner's statement were correct (to which Applicants do not agree), the statement does not establish a failure to comply with 35 USC §112. There is no requirement in the statute that a claim must "explain" or "describe." This is the function of the specification. The Examiner has pointed out no vagueness or ambiguity in the claim.

Based on the foregoing, Applicant submits that the rejection to the claims under 35 U.S.C. § 112, second paragraph, is not proper and should be withdrawn.

#### **Rejections Under 35 U.S.C. § 103(a)**

The Examiner rejected claims 1-21 under 35 U.S.C. § 103(a) as being unpatentable over McDonough et al. in view of Simor, and further in view of Serpanos. Applicant respectfully traverses this rejection since no prima facie case of obviousness has been established with respect to claims 1-21.

To establish a prima facie case of obviousness, three basic criteria must be met. First, the prior art reference as modified must teach or suggest all the claim elements. Second, there must be some suggestion or motivation, either in the reference or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine the reference teachings. Third, a reasonable expectation of success must exist. Moreover, each of these requirements must "be found in the prior art, and not be based on applicant's disclosure." (M.P.E.P. § 2143.03 (8<sup>th</sup> ed. 2001)).

Regarding claim 1, the Examiner again alleged that the references teach providing "an indication to the first process of the expected time before the resource will become available determined based on a call duration value associated with the second process," pointing to col. 15, lines 30-33 and col. 12, lines 60-67 of McDonough et al. in

doing so. Applicant respectfully disagrees with the Examiner's characterization of the references.

In addressing Applicant's argument on this point, the Examiner incorrectly alleged that "Applicant avoids mentioning the relevant portions of the cited sections from the Examiner but instead points to other parts that are not related to the invention." (OA, paragraph 29). To the contrary, Applicant explicitly made note of the portions of McDonough et al. relied upon by the Examiner, as follows:

The Examiner, in rejecting claim 1, refers to col. 15, lines 30-33 and col. 12, lines 60-67 of McDonough et al., as an alleged teaching of providing "an indication to the first process of the expected time before the resource will become available determined based on a call duration value associated with the second process." Col. 12, lines 60-67 is concerned with automatically balancing contacts between resource locations. Col. 15, lines 30-33 of McDonough et al., is concerned with checking routing rules for overflow processing when a statistics server (e.g., server 180) indicates that an optimal resource is not expected to be available within a desired timeframe.

Amendment dated 11/1/04, page 9, 4<sup>th</sup> paragraph.

Applicant resubmits that nothing that the Examiner emphasized nor anything else in McDonough et al. shows providing "an indication to the first process of the expected time before the resource will become available determined based on a call duration value associated with the second process," as alleged by the Examiner. In paragraph 29 of the Office Action mailed March 8, 2005, the Examiner alleged that "McDonough teaches the call duration value (the "expected" call arrival time)(col. 12, line 61, for example)." Col. 12, lines 60-62, reads "In prior systems, contacts are often balanced between centers based on 'expected' call arrival and staffing assumptions." This

“expected call arrival,” however, is an estimate of the rate of calls received by a call center, not a call duration value, as alleged by the Examiner.

In addition, as admitted by the Examiner at paragraph 9 of the Office Action mailed March 8, 2005, McDonough et al. does not show that the first process retries requesting of the resource at a later time based on this desired timeframe.

Simor is not sufficient to overcome the aforementioned deficiencies of McDonough et al. Applicant notes that the Examiner used Simor to allege a teaching of using monitors to notify resource monitors when an allocating process terminates, and releasing the resource by the resource manager when it is notified, not to allege a teaching of providing “an indication to the first process of the expected time before the resource will become available,” or of “the first process retrying requesting of the resource at a later time based on the indication.”

Serpanos is not sufficient to overcome the aforementioned deficiencies of McDonough et al. and Simor. Even though the Examiner relies on McDonough et al. to allege a teaching of providing “an indication to the first process of the expected time before the resource will become available determined based on a call duration value associated with the second process,” the Examiner also alleges that Serpanos “teaches the expected time before the resource will become available determined based on a call duration value (waiting time)” (OA, paragraph 29). Applicant respectfully disagrees with the Examiner’s characterization of Serpanos.

The “waiting time” pointed to by the Examiner is a predetermined time that a requester will wait for a resource before requesting use of the resource again (see e.g., Serpanos, col. 6, lines 39-41). The predetermined time varies dependent on the

characteristics of the requestor (see e.g., Serpanos, col. 6, lines 42-44). Such a time is different than an expected time before the resource will become available determined based on a call duration value, contrary to the Examiner's allegation. Specifically, "waiting time" depends on characteristics of a requestor, while "an expected time before the resource will become available" depends "on a call duration value of a communication associated with the second process." In other words "an expected time" relates to characteristics of an entity that already has use of the resource, not one that is still attempting to request it.

To attempt to show a teaching of "retrying requesting of the resource at a later time based on the indication," the Examiner pointed to col. 6, lines 40-41, col. 7, lines 13-17, and col. 1, lines 26-33, of Serpanos, noting that Serpanos teaches an adaptive scheduling scheme for dynamic service allocation on a shared resource that requests an additional service again based on the waiting time. Requesting an additional service based on "waiting time," however, does not constitute "retrying requesting of the resource at a later time based on the indication." More particularly, by requesting an additional service based on "waiting time," a requestor in Serpanos is essentially requesting use of a resource based on a characteristic of itself. "Retrying requesting of the resource at a later time based on the indication," on the other hand, is essentially requesting use of a resource based on a characteristic on another entity, not the requestor itself.

The references fail to teach or suggest the features that the Examiner asserts. Accordingly, the references fail to teach all elements of claim 1 and a *prima facie* case of obviousness has not been established. Accordingly, Applicant submits that the

rejection of claim 1 is unsupported by McDonough et al. in view of Simor, and further in view of Serpanos. Because independent claims 10-12 and 17 recite language similar to that which distinguishes claim 1 from McDonough et al., Simor, and Serpanos, Applicant further submits that the rejections of claims 10-12 and 17 are unsupported by McDonough et al. in view of Simor, and further in view of Serpanos for at least the reasons given with respect to claim 1.

The rejections of dependent claims 2-9, 13-16, and 18-21 are unsupportable for the reasons stated above with regard to their respective base claims. Moreover, Applicant respectfully submits that these claims are distinguishable over the applied references for their own features.

Because rejections of the claims are not supported, each of the claims is allowable. Accordingly, Applicant respectfully requests the timely allowance of this application.

Applicant respectfully requests that this Request for Reconsideration under 37 C.F.R. § 1.116 be entered by the Examiner. Applicant submits that this response does not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner, since no changes to the claims have been proposed. Therefore, this Request for Reconsideration should allow for immediate action by the Examiner.

Finally, Applicant submits that the entry of the Request for Reconsideration would place the application in better form for appeal, should the Examiner dispute the patentability of the pending claims.

If an extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this Amendment, such extension is requested. If there are any other fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: May 6, 2005

By: 

Walter D. Davis, Jr.  
Reg. No. 45,137